# BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII

In the Matter of the Application of )

HAWAI'I ELECTRIC LIGHT COMPANY, INC. ) DOCKET NO. 2021-0085

MAUI ELECTRIC COMPANY, LIMITED )

For Approval of Fuels Transportation )

Contract with Sause Bros. Inc. and )

to include the Contract's Costs in )

the Companies' Energy Cost Recovery )

Clause. )

INTERIM DECISION AND ORDER NO. 38148

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#### INTERIM DECISION AND ORDER

By this Interim Decision and Order, 1 the Commission, on an interim basis: (1) approves the inter-island fuel transportation contract between the Companies and Sause Bros., Inc. ("Sause"); and (2) approves the Companies' inclusion of the costs of the marine transportation handling, other costs, and related taxes and fees in each Company's respective Energy Cost Recovery Clause ("ECRC").

 $<sup>^1\,\</sup>mathrm{The}$  Parties to this proceeding are HAWAI'I ELECTRIC LIGHT COMPANY, INC. and MAUI ELECTRIC COMPANY, LIMITED ("HELCO" and "MECO", respectively, and collectively, the "Companies") and the DIVISION OF CONSUMER ADVOCACY, an ex officio party pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 16-601-62(a) ("Consumer Advocate").

I.

#### BACKGROUND

Α.

#### Procedural History

On June 4, 2021, the Company filed its application<sup>2</sup> requesting expedited approval of: (1) of an inter-island fuel transportation contract with Sause with an effective date of January 1, 2022 ("Sause Contract"); and (2) inclusion of the costs of the marine transportation handling, other costs, and related taxes and fees in each of the Company's respective ECRCs.<sup>3</sup>

On June 25, 2021, the Company filed a motion for a protective order4 which the Commission granted on July 27, 2021.5

Also on July 27, 2021, the Commission issued Order No. 37882, which instructed the Parties to file a stipulated procedural schedule for the Commission's review.

<sup>&</sup>lt;sup>2</sup> "Application of Hawai'i Electric Light Company, Inc., and Maui Electric Company, Limited; Verification; Exhibits A - G; and Certificate of Service," filed on June 4, 2021 ("Application").

<sup>&</sup>lt;sup>3</sup>Application at 1.

<sup>4&</sup>quot;Hawai'i Electric Light Company, Inc. and Maui Electric Company, Limited's Motion for Protective Order," filed on June 25, 2021.

<sup>&</sup>lt;sup>5</sup>Protective Order No. 37881, filed on July 27, 2021 ("Protective Order No. 37881").

Gorder No. 37881, "Instructing the Parties to File a Stipulated Procedural schedule," filed on July 27, 2021 ("Order No. 37882")

The Parties submitted a stipulated procedural schedule pursuant to Order No. 37882 on August 9, 2021.<sup>7</sup> The Consumer Advocate issued its first set of information requests ("IRs") to the Companies on August 27, 2021.<sup>8</sup> to which the Companies responded on September 9, 2021.<sup>9</sup>

On September 10, 2021, the Commission established a procedural schedule to govern the proceedings in this Docket. 10

On September 24, 2021, the Consumer Advocate issued its supplemental IRs to the Companies, 11 to which the Companies responded on October 6, 2021.12

<sup>&</sup>lt;sup>7</sup>Joint Letter From: T. Black and Consumer Advocate To: Commission Re: Docket No. 2021-0085 - Hawai'i Electric Light Company, Inc., and Maui Electric Company, Limited; For Approval of Fuels Transportation Contract with Sause Bros. Inc.; "Agreed-Upon Deadline Dates," filed on August 9, 2021.

<sup>&</sup>lt;sup>8</sup>Letter From: Consumer Advocate To: Commission Re: Docket No. 2021-0085 - In the Matter of Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited Application for Approval of Fuels Transportation Contract with Sause Bros., Inc. and to Include the Contract's Cost in the Companies' Energy Cost Recovery Clause, filed on August 27, 2021 ("CA/IR-").

<sup>9</sup>Letter From: K. Katsura To: Commission Re: Docket No.
2021-0085 - Hawai'i Electric Light Company, Inc. and Maui Electric
Company, Limited; For Approval of Fuels Transportation Contract
with Sause Bros., Inc.; "Responses to Consumer Advocate's
Information Requests," filed on September 9, 2021 (references to
individual responses will be cited as "Response to CA/IR-").

<sup>&</sup>lt;sup>10</sup>Order No. 37961, "Establishing a Procedural Schedule," filed on September 10, 2021 ("Order No. 37961").

<sup>11 &</sup>quot;Division of Consumer Advocacy's Submission of Supplemental
Information Requests," filed on September 24, 2021 ("CA/SIR-\_\_").

<sup>12</sup> Letter ĸ. From: Katsura To: Commission Re: Docket No. 2021-0085 - Hawai'i Electric Light Company, Inc. and Maui Electric Company, Limited; For Approval of Fuels Transportation Contract with "Responses Sause Bros., Inc.; Consumer Advocate's to

Pursuant to Order No. 37961, the Consumer Advocate submitted its statement of position on October 28, 2021, 13 and the Companies then submitted their reply statement of position in response to the Consumer Advocate's SOP on November 8, 2021. 14

Pursuant to the deadlines set forth in Order No. 37961, no further briefing is contemplated, and the Application is ready for decision-making on an interim basis.

В.

## Parties to the Sause Contract

The Companies include: (1) HELCO, which has its principal place of business and executive offices situated in Hilo, Hawaii on the island of Hawaii, and is an operating public utility engaged in the production, purchase, transmission, distribution, and sale of electricity on the Island of Hawaii; and (2) MECO, which has its principal place of business and executive offices situated in Kahului on the island of Maui, and which is also an

Supplemental Information Requests," filed on October 6, 2021. (references to individual responses will be cited as "Response to CA/SIR-\_\_\_" with the number).

<sup>&</sup>lt;sup>13</sup>Division of Consumer Advocacy's Statement of Position," filed on October 28, 2021 ("CA's SOP").

<sup>14</sup>Letter From: K. Katsura To: Commission Re: Docket No. 2021-0085 - Hawai'i Electric Light Company, Inc. and Maui Electric Company, Limited; For Approval of Fuels Transportation Contract with Sause Bros., Inc.; "Hawaiian Electric's Reply Statement of Position," filed on November 8, 2021 ("Companies' Reply SOP").

operating public utility engaged in the production, purchase, transmission, distribution, and sale of electricity that serves the islands of Maui, Molokai, and Lanai. The other party to the Sause Contract is Sause, which the Companies represent is a marine transportation company that has operated in Hawaii since 1966.

C.

## Previous Fuel Transportation Contract and Request for Proposal

The Companies currently have a contract for the inter-island transportation of fuel with Kirby Offshore Marine, LLC ("Kirby"), which has been in effect since January 1, 2002, and which expires on December 31, 2021 (the "Kirby Contract"). The Kirby Contract was approved by the Commission via Decision and Order No. 19101 in Docket No. 01-0056. 18

Because the Kirby Contract expires on December 31, 2021, the Companies "chose to competitively source marine transportation service companies to transport fuels from O'ahu to the islands of

<sup>&</sup>lt;sup>15</sup>Application at 4-5.

<sup>&</sup>lt;sup>16</sup>Application at 3.

<sup>&</sup>lt;sup>17</sup>Application at 3, Exhibit C at 1.

 $<sup>^{18}</sup>$ Docket No. 01-0056, Decision and Order No. 19101, filed on December 10, 2001 ("D&O No. 19101").

Maui, Moloka`i, and Hawai`i."19 To effectuate this competitive sourcing, the Companies issued a request for proposal ("RFP") for:

[A] long-term agreement for dedicated inter-island transport of clean and dirty petroleum products by tug and tank barge from the island of Oahu to the islands of Maui, Hawaii, and Molokai on a regular basis, and to the island of Kauai should the need arise.<sup>20</sup>

The RFP required proposals by May 29, 2020.<sup>21</sup> The Companies state that they received timely proposals from Centerline Logistics Corporation ("CLL"), Kirby, and Sause. The Companies indicate Sause then withdrew from the bidding process, citing restrictions related to the COVID-19 global pandemic, and that the proposals from both CLL and Kirby were "significantly higher" than the Companies' current costs.<sup>22</sup> Because the proposals had higher costs, the Companies worked with Kirby to extend the Kirby Contract, but Kirby eventually indicated that it "would not be in a position to extend the [Kirby C]ontract." <sup>23</sup> The Companies then reached out to Sause to see if it would reconsider submitting a proposal for the RFP.<sup>24</sup>

<sup>&</sup>lt;sup>19</sup>Application, Exhibit C at 1.

<sup>&</sup>lt;sup>20</sup>Application, Exhibit C at 1.

<sup>&</sup>lt;sup>21</sup>Application, Exhibit C at 1.

<sup>&</sup>lt;sup>22</sup>Application, Exhibit C at 2.

<sup>&</sup>lt;sup>23</sup>Application, Exhibit C at 2.

<sup>&</sup>lt;sup>24</sup>Application, Exhibit C at 2.

The Companies state that they engaged in multiple rounds of negotiations with various entities regarding the RFP, but ultimately selected Sause's proposal, which "represents an approximate increase of 14% over the" current Kirby Contract.<sup>25</sup> Because of the time the above process took, the Companies were unable to seek Commission approval until June 2021 and asks for expedited approval because of the pending expiration of the Kirby Contract.<sup>26</sup>

D.

#### Material Terms of the Sause Contract

A partially redacted version of the Sause Contract is included as Exhibit 1 to the Companies' Response to the Consumer Advocate's IRs, and the unredacted version was filed with the Commission under confidential seal pursuant to Protective Order No. 37881.<sup>27</sup> In general, the Companies state that the Sause Contract "principally unchanged operationally" is from the current Kirby Contract "with regard to the general fuel transportation and overall delivery of the fuels[.]"28 Under the Sause Contract,

<sup>&</sup>lt;sup>25</sup>Application at 4.

<sup>&</sup>lt;sup>26</sup>Application at 2.

 $<sup>^{27}</sup>$ Response to CA/IR-4, Attachment 1. References to the "Sause Contract" shall be used hereinafter for ease of reading.

<sup>&</sup>lt;sup>28</sup>Application at 12.

Sause "will deliver the fuel from Barbers Point Harbor to the respective islands and discharge the cargo via pipeline to the fuel storage facilities at each of the island[s'] harbor fuel piers."29

Term: The Sause Contract has an initial term of five and one quarter (5.25) years, and is to begin on January 1, 2022 and end on March 1, 2027.<sup>30</sup> The Sause Contract automatically renews after the initial term for additional five (5) year terms unless either party provides written notice of termination to the other party.<sup>31</sup>

Pricing: The Sause Contract is unlike the Kirby Contract in how the pricing is calculated. The price in the Sause Contract is a fixed daily hire rate which the Companies say, "will help minimize pricing swings in fuel costs related to transportation for the Companies." 32 The precise pricing terms have been designated as confidential by the Companies, but the Companies

<sup>&</sup>lt;sup>29</sup>Application at 12.

<sup>30</sup>Application at 12; Sause Contract at 5-6.

<sup>&</sup>lt;sup>31</sup>Application at 12; Sause Contract at 6, ¶ 1.2. The Commission observes that the Companies indicated the renewal terms were "for additional three (3) five (5) year terms" which appears to by an error, as the Sause Contract itself indicates five-year successive terms. Sause Contract at 6.

<sup>&</sup>lt;sup>32</sup>Application at 13.

state that the Sause Contract "represents an approximate increase of 14% over the" current Kirby Contract. 33

Sause will provide the barge that will Barge: be used to transport fuel between islands. 34 The barge in question, the Commencement Bay, is a double-hulled tank barge with a total capacity of at least 65,000 barrels of crude oil and the capacity to segregate black oil carrying from carrying two diesel grades, including volume segregation flexibility on every voyage. 35 The Commencement Bay is also equipped with side winches, which "minimize barge movement when there are surges in the harbor . . . [and] ensure uninterrupted load and discharge operations during adverse weather conditions to ensure security of supply."36 Sause is also responsible for procuring a substitute barge when the Commencement Bay needs to be serviced. 37

<u>Maintenance</u>: The Sause Contract provides that Sause is solely responsible for the maintenance of the tug and barge and all costs associated therewith.<sup>38</sup>

<sup>33</sup>Application at 4.

<sup>34</sup>Sause Contract at 6, ¶ 2.2.

<sup>35</sup>Sause Contract at 6, ¶ 2.2, Exhibit A.

 $<sup>^{36}</sup>$ Application at 14, Sause Contract at 6, ¶ 2.2, Exhibit A.

<sup>&</sup>lt;sup>37</sup>Application at 13.

<sup>&</sup>lt;sup>38</sup>Sause Contract at 20, ¶ 6.1.

<u>Personnel</u>: Under the Sause Contract, Sause warrants that throughout the term of the Sause Contract, Sause shall ensure the barge and the tug shall have "a full and efficient complement of" of all personnel necessary to operate the vessels who shall all possess any requisite training, experience, proficiencies, and certifications.<sup>39</sup>

<u>Insurance</u>: Sause is responsible, at its sole expense (including the expense of deductibles, premiums, calls, and policy charges), to procure and maintain protection and indemnity insurance with total coverage of not less than \$1 billion.<sup>40</sup>

<u>Damages</u>: The Commission observes that the Sause Contract provides certain protections to the Company in the event Sause fails to perform its contractual duties.

II.

#### PARTIES' POSITIONS

Α.

#### Companies

The Companies provide a number of justifications in support of their Application including:

<sup>&</sup>lt;sup>39</sup>Sause Contract at 20, ¶ 3.1.

<sup>&</sup>lt;sup>40</sup>Sause Contract at 23, ¶ 7.1.B.

- 1. Selecting a marine service company that has locally-based management and operations and maintenance infrastructure (which Sause does) is beneficial to inter-island fuel transportation because:
- A. Having local management and resources "allows for immediate response to any situation and a constant awareness of current conditions" which is important given the unpredictability of severe weather and ocean conditions; 41
- B. Local management and resources allow a marine service company to quickly respond to changing supply needs the Companies' target having a 20-30 day fuel inventory for each island serviced which, in turn, allows the Company to mitigate issues related to delays in fuel resupply and unanticipated increases in consumption before those issues can impact the Companies' ability to generate electricity; 42
- 2. The Commencement Bay is large enough that the Companies are "in a strategic position to" transport product for Par Refining Hawaii, LLC or IES Downstream, LLC "when their product movement requirements outweigh their barging capability[,]" which the Companies state would produce "savings that will be

<sup>&</sup>lt;sup>41</sup>Application at 7.

<sup>&</sup>lt;sup>42</sup>Application at 7-8.

passed on to the Companies' customers."<sup>43</sup> The Companies estimate that, "had the Sause Contract been in effect" in the first half of 2021, transporting product for third parties would have resulted in approximately \$560,000 in savings.<sup>44</sup>

3. The Companies anticipate a continued gradual decline in inter-island fuel transportation voyages due to, inter alia: phasing out high sulfur fuel oil ("HSFO") units (such as the expected decommissioning of the Puna Steam Unit in 2023); increased electrical generation from renewable energy sources; and power generation on the Hawai`i from island of renewed use of geothermal wells by Puna Geothermal Ventures ("PGV"). 45 The Companies indicate that, to accommodate this expected decline, they would have preferred to use a per voyage or per barrel rate to calculate the price, but that "[d]ue to the current market conditions that marine transportation companies operate in, all proposals to the RFP were presented with a daily hire rate."46 The Companies state that, to mitigate the increased transportation costs, they will reduce variable voyage costs by "optimizing voyages maximizing the total capacity of the barge[,]" which they say will "reduce the overall cost" to the Companies and,

<sup>&</sup>lt;sup>43</sup>Application at 8.

<sup>44</sup>Application at 8.

<sup>45</sup>Application at 8-10.

<sup>46</sup>Application at 11.

thus, their customers.<sup>47</sup> The Companies point out that the fixed daily rate "will help minimize pricing swings in fuel costs related to transportation."<sup>48</sup>

4. The Commencement Bay has a larger capacity than the barge used under the Kirby Contract by about 14,000 barrels. This increased capacity, combined with the configuration that allows the Commencement Bay to segregate different types of fuel, "enables more fuel to be transported on each voyage, reducing the overall number of required voyages and providing for more optimization than the" barge used under the Kirby Contract. 49 The segregation configuration offered by the Commencement Bay also allows the Companies to employ strategies to optimize each voyage such as increasing the potential to transport fuel for a fee from other petroleum providers if the needs arises, and allowing the Companies to reduce the amount of HSFO transported as the need decreases without incurring additional cleaning costs that would have been required with the barge used under the Kirby Contract. 50 The winches on the Commencement Bay help "ensure uninterrupted load and discharge operations during adverse weather conditions to ensure

<sup>&</sup>lt;sup>47</sup>Application at 11-12.

<sup>&</sup>lt;sup>48</sup>Application at 13.

<sup>&</sup>lt;sup>49</sup>Application at 13.

<sup>50</sup>Application at 13-14.

security of supply[,]" as compared to the barge used under the Kirby Contract because it lacks such winches. 51

Cost Impact. The Companies state that the pricing under the Sause Contract will result in additional costs to the Companies in the amount of approximately \$1,068,470 as compared to the existing Kirby Contract.<sup>52</sup> These additional costs are broken down by individual Company as follows: MECO (Maui) - \$577,620; MECO (Molokai) - \$77,350; and HELCO - \$413,500.<sup>53</sup>

Residential Bill Impact. Based on these estimated costs, the Companies project that the Sause Contract would have the following approximate impacts on monthly residential bills for the 2019 reference year: MECO (Maui) customers - increase of \$0.30 for a typical 500 kWh bill; MECO (Molokai) customers - increase of \$1.15 for a typical 400 kWh bill; and HELCO - increase of \$0.22 for a typical 500 kWh bill.<sup>54</sup>

Greenhouse Gas ("GHG") Analysis. The Company states that the GHG emissions under the Sause Contract are similar to those under the current Kirby Contract, but "the overall GHG emissions throughout the life of the contract are expected to be

<sup>&</sup>lt;sup>51</sup>Application at 14.

<sup>&</sup>lt;sup>52</sup>Application at 15.

<sup>&</sup>lt;sup>53</sup>Application at 15.

<sup>&</sup>lt;sup>54</sup>Application at 15.

lower than with the [barge under the Kirby Contract] due to a more efficient tug and an overall fewer number of voyages between islands." <sup>55</sup> On average, the Companies expect a reduction of approximately 15% in the total number of voyages due to the Commencement Bay's increased capacity. <sup>56</sup>

Using the 2019 average volumes loaded for each voyage, the Companies expect the total annual GHG emissions to be 4,315 metric tons of carbon dioxide equivalent ("MT CO<sub>2</sub>e").<sup>57</sup> This represents an approximate reduction of 14% GHG emissions when compared to the current situation, and the Companies expect GHG emissions to further decline as the number of voyages decreases in the future.<sup>58</sup>

В.

# Consumer Advocate

The Consumer Advocate recommends that the Commission approve the Application on an interim basis, subject to certain conditions. <sup>59</sup> In reaching this recommendation, the Consumer Advocate notes that it

<sup>&</sup>lt;sup>55</sup>Application at 16.

<sup>&</sup>lt;sup>56</sup>Application at 16.

<sup>&</sup>lt;sup>57</sup>Application at 16.

<sup>&</sup>lt;sup>58</sup>Application at 16.

<sup>&</sup>lt;sup>59</sup>CA's SOP at 2.

reviewed "the continued need to have fuel transported to the islands of Hawaii and Maui County through the Companies' interisland fuel transportation arrangements as well as whether the selection and terms of the Sause Contract appear reasonable."60

1.

### Need for Inter-Island Fuel Transportation

The Consumer Advocate raises a concern that the Companies' projected fossil fuel requirements for the islands serviced "generally appear below historical volumes[,]" but ultimately concludes that the Companies "will require the delivery of fuel to Maui, Molokai, and Hawaii Island over the next five years" which is "consistent with the initial term of the Sause Contract." Thus, the Consumer Advocate observes, "it appears that there is a continued need for interisland fuel transportation to Hawaii Island and Maui County." 62

2.

# Selection of the Sause Contract

After reviewing the Companies' Application and IR Responses, the Consumer Advocate states that "it appears that

<sup>60</sup>CA's SOP at 3.

<sup>&</sup>lt;sup>61</sup>CA's SOP 6.

<sup>62</sup>CA's SOP at 6.

the Sause Contract resulted from a competitive bidding process, whereby bids from multiple companies were solicited, followed by negotiations[,]" but raises concerns regarding how certain costs were calculated and what assumptions were made in calculating such costs. 63 "The Consumer Advocate believes that these questions should be addressed prior to a final decision and order approving the proposed contract." 64

3.

# Terms of the Sause Contract

The Consumer Advocate first notes that, other than the term, pricing, and certain expenses to be paid to Sause, the terms of the Sause Contract "appear to be substantially similar to the existing" Kirby Contract. 65

Term. Because the Consumer Advocate required inter-island delivery of fuel for at least the next five years, the Consumer Advocate "believes that the [Sause C]ontract's [i]nitial [t]erm, which extends through March 31, 2027, is reasonable. 66 Regarding the automatic renewal provision, the Consumer Advocate "appreciates the Companies'

<sup>63</sup>CA's SOP at 10-11.

<sup>64</sup>CA's SOP at 11.

<sup>&</sup>lt;sup>65</sup>CA's SOP at 11-12.

<sup>66</sup>CA's SOP at 13.

concern that recent contract renegotiations have resulted in price increases to the existing contracts[,]" and notes that "the barging industry has recently consolidated, reducing the capacity in the market and the barges suitable to meet the Companies' needs."67 However, the Consumer Advocate is concerned with the Companies' customers being unduly burdened by fuel transportation costs, "especially as fossil fuel consumption continues to decline[,]" and thus recommends that the Commission require that the Companies, one year prior to the expiration of any term of the Sause Contract, provide "a written notice indicating whether the Companies intend to extend the Initial or Extended Term, the basis for the extension, and the ongoing work to secure a cost effective extension or new agreement."68

Rates and Bill Impacts. The Consumer Advocate observes that, based on the Companies' calculations, the Sause Contract "is expected to result in bill impacts ranging from \$0.22 per month (Hawaii Island) to \$1.15 per month (Molokai)[,]" but notes that these estimates do not reflect an optimized schedule with joint voyages or anticipated revenues from transporting fuel for a third-party. 69 The Consumer Advocate stresses that it is "important that any such benefits will be passed

<sup>67</sup>CA's SOP at 14.

<sup>&</sup>lt;sup>68</sup>CA's SOP at 15.

<sup>&</sup>lt;sup>69</sup>CA's SOP at 16.

through to offset the costs that will be recovered from customers[,]" and observes that the Companies indicate that savings from transporting third-party cargo will be credited to offset the cost of the Sause Contract.70

4.

#### **ECRC**

The Consumer Advocate has concerns regarding whether the ECRC "should be used to recover transportation costs associated with the transport of fuel."<sup>71</sup> The Consumer Advocate states that "[w]hile fuel transportation expenses are related to fuel expense, the magnitude and volatility of fuel transportation expenses do not approach the magnitude of the fuel expenses and is a small fraction of the fuel expenses[,]" and notes that "with the recent adoption of the annual revenue adjustment formula resulting from the Performance Based Ratemaking [("PBR")] framework, . . . allowing the Companies to simply pass through fuel transportation costs through the Companies' ECRCs would not be consistent with the cost control intent considered[.]" Therefore, the Consumer Advocate concludes, if the Commission is inclined to allow the recovery of fuel transportation costs through

<sup>70</sup>CA's SOP at 16, n. 33 (citing Companies' Response to CA/IR-16.6.).

<sup>&</sup>lt;sup>71</sup>CA's SOP at 17.

<sup>&</sup>lt;sup>72</sup>CA's SOP at 17.

the ECRC, it "should make clear that any revenues that may be generated through the shipment of third-party cargo are relevant and should be used to offset the costs recovered from customers." 73

5.

## Impact on GHG Emissions

The Consumer Advocate "believes that an assessment of lifecycle GHG emissions[,]" which was not provided in the Application, "would be consistent with the consideration of lifecycle GHG emissions in [other recent dockets involving contracts or consent to a new contract]". The Consumer Advocate appreciates the lifecycle analysis provided by the Companies in its SIR response, but "has remaining questions regarding some of the assumptions and calculations" in such analysis and "believes additional discovery would assist in further developing an understanding of the lifecycle GHG estimates provided by the Companies."

Based on the foregoing, the Consumer Advocate "recommends that the Commission approve the Companies' request for an interim decision and order approving the Sause Contract[,]"

<sup>&</sup>lt;sup>73</sup>CA's SOP at 17.

<sup>&</sup>lt;sup>74</sup>CA's SOP at 17, n. 34 (citing Docket Nos. 2019-0380 and 2019-0090).

<sup>&</sup>lt;sup>75</sup>CA's SOP at 18.

with the caveat that it be allowed to continue its review of the cost calculations and GHG estimates through further discovery and that, if the Commission approves the inclusion of the costs of the marine transportation handling, other costs, and related taxes and fees in the Companies' respective ECRCs, the Companies be required to flow any benefits through the ECRC, as well.<sup>76</sup>

C.

# Companies' Reply SOP

Companies' brief Reply SOP The states that thev. Advocate's "appreciate[] the Consumer support of the [A]pplication, do[] not oppose those conditions set forth in the Consumer Advocate's SOP, and believe[] the proceeding is ready for Commission decision making."77 However, the Companies ask that, if an interim decision and order is issued, any costs incurred under the Sause Contract during the period following interim approval until the Commission issues a final decision and order is issued not be subjected to any retroactive cost disallowance or adjustment. 78

<sup>76</sup>CA's SOP at 19.

<sup>77</sup>Companies' Reply SOP at 1.

<sup>&</sup>lt;sup>78</sup>Company's SOP at 1.

III.

#### DISCUSSION

Α.

# Expedited Nature of the Proceeding

The Commission observes that the Companies requested approval of the Sause Contract on an unusually expedited However, the Commission also recognizes the difficulties basis. the Companies faced in either negotiating an extension of the Kirby Contract or procuring a new contact via competitive bidding, due in part to the impact the ongoing COVID-19 pandemic had on the State's economy, and the shipping industry in particular. Further, the Commission is cognizant that the current Kirby Contract expires on December 31, 2021, and that the Companies' customers would not be served if there is not a replacement contract in place, at least Given the unique posture of this docket, on an interim basis. the Commission concludes that issuing an interim decision and order on an expedited basis and prior to the expiration of the Kirby Contract is appropriate.

В.

#### Procurement of the Sause Contract

The Sause Contract was selected by the Companies after issuing the RFP, which involved the Companies posting the RFP to their website and emailing a link thereto to seven interested 2021-0085

barging companies, considering the proposals received in response to the RFP, and then reaching out to Sause and negotiating with other bidders "to drive price increases down[.]"79

The Sause Contract represents an approximately 14% increase over the existing Kirby Contract, but it was the lowest bid received by the Company. 80 The Commission observes that the Consumer Advocate agrees, and concluded that the Sause Contract "resulted from a competitive bidding process" and appears to have effectuated the "lowest overall costs compared to other bids received. 81

After reviewing the information and documentation provided by the Companies (including the information designated as confidential) the Commission is satisfied -- on an interim basis -- that the Sause Contract was the result of a competitive bidding process that protects the public interest and that the Sause Contract represents the lowest overall costs compared with available alternatives under the circumstances.82 However, the Commission agrees with the Consumer Advocate that there are more questions to address before a final decision and order can be issued.

<sup>&</sup>lt;sup>79</sup>Application at 2, Exhibit C at 1.

<sup>&</sup>lt;sup>80</sup>Application at 4, Exhibit C.

<sup>81</sup>CA's SOP at 10.

<sup>82</sup>Application at 4, 7-9, Exhibit C.

C.

## Addressing the Sause Contract

1.

# Material Sause Contract Terms and Conditions

a.

### Terms Materially Similar to the Kirby Contract

The Commission agrees with the Consumer Advocate and the Companies that, apart from a few exceptions such as the term, rates, the barge, and certain expenses to be paid, the Sause Contract is "substantially similar to the existing" Kirby Contract.<sup>83</sup> The Commission approved the terms of the Kirby Contract as reasonable in its Decision and Order No. 19101.<sup>84</sup> Therefore, after a review of the record and careful consideration, as discussed further below, the Commission finds that the terms of the Sause Contract are reasonable and serve the Companies' customers.

b.

#### Term

The Commission concurs with the Consumer Advocate that the initial five-year term of the Sause Contract "is reasonable."85

<sup>63</sup>See CA's SOP at 11-12; Application, Exhibit E (Kirby Contract);
and Sause Contract.

<sup>84</sup>D&O No. 19101 at 4-5.

<sup>85</sup>CA's SOP at 13.

Such term allows the Companies to secure the ability to transport fuel inter-island in the face of a rapidly shifting marine transportation industry, but is not so long that the Companies are precluded from exploring more cost-effective inter-island fuel transportation options as this landscape evolves. The Commission appreciates the Consumer Advocate's concerns regarding automatic renewal of the Sause Contract and will take such concerns into account in its final decision and order.

c.

#### Pricing Terms

The Commission is cognizant and concerned that the Sause Contract represents an approximate 14% increase in costs over the existing Kirby Contract. Based on the analysis provided by the Companies, this increased cost is expected to increase the utility bills for the Companies' residential customers in the following ways: MECO (Maui) customers - increase of \$0.30 for a typical 500 kWh bill; MECO (Molokai) customers - increase of \$1.15 for a typical 400 kWh bill; and HELCO - increase of \$0.22 for a typical 500 kWh bill.

However, the Commission also recognizes that the Companies indicate these numbers do not account for an optimized schedule with joint voyages or any revenues associated with

transporting fuel for third parties. 86 Accounting for such numbers would presumably reduce the bill increases to residential customers.

After reviewing the record and upon careful consideration, the Commission concludes -- on an interim basis -- that the pricing terms of the Sause Contract are reasonable and serve the interests of the Companies' customers under these circumstances. Those terms may result in an increase to the bills of the Companies' customers, but those increases are relatively small, and the Companies appear to have considered reasonable alternatives and taken reasonable steps to mitigate those increases moving forward. This will be further reviewed leading up to the final decision and order.

d.

# Changes to the Barge

The Commission observes that the changes to the barge (compared to the Kirby Contract) all appear to be beneficial to the Companies' customers. For example, the increased capacity of the Commencement Bay allows for more fuel to be transported per voyage, which should reduce the overall number of voyages (and therefore reduce fees, lubricant costs, and related taxes)

<sup>86</sup>Response to CA/IR-10b.-c, 11, 16.d, and 17.d.

required.<sup>87</sup> Further, the configuration of the Commencement Bay will allow for better and more flexible fuel segregation, which, in turn, reduces cleaning costs.<sup>88</sup> Finally, the winches on the Commencement Bay (which were not provided on the barge under the Kirby Contract) should improve the load and discharge operations which should reduce delays.<sup>89</sup> After reviewing the record and upon careful consideration, the Commission finds the terms of the Sause Contract related to the barge reasonable, and a significant improvement over the terms of the existing Kirby Contract.

e.

#### Charges and Expenses to Be Paid

The Sause Contract contains terms that require the payment of certain charges and expenses that were not contemplated by the existing Kirby Contract. 90 The Commission appreciates the Consumer Advocate's concerns regarding these charges and expenses, but notes that the Sause Contract still represents the most cost-effective method to effectuate the Company's inter-island fuel transportation at this time based on this record. Thus,

<sup>&</sup>lt;sup>87</sup>Application at 13-14.

<sup>88</sup>Application at 13-14.

<sup>89</sup>Application at 13-14.

<sup>90</sup> Application, Exhibit E (Kirby Contract); and Sause Contract.

given the imminent expiration of the Kirby Contract and the fact that the Sause Contract appears to have effectuated the lowest overall costs compared to other bids received, the Commission concludes that -- on an interim basis -- the terms of the Sause Contract related to charges and expenses to be paid are reasonable. The Consumer Advocate may address any concerns it has through continued discovery during the remainder of this proceeding.

2.

# <u>Greenhouse Gas Emissions Analysis</u>

The Companies' GHG analysis indicates that "the expected annual GHG emissions [are] 3,729 MT CO<sub>2</sub>e, which is a 14% reduction" over the emissions under the existing paradigm. 91 In response to the Consumer Advocate's SIR, the Companies estimate that there will be a total of 25,551 MT CO<sub>2</sub>e in emissions over the initial term of the Sause Contract. 92 After a review of the record, the Commission finds -- on an interim basis -- that the Companies provide satisfactory estimates of GHG emissions associated with the inter-island transportation to be effectuated under the Sause Contract, and that approval of the Sause Contract would

<sup>91</sup>Application at 16.

<sup>92</sup>Response to CA/SIR-10.d.

result in a significant reduction in GHG emissions when compared to the existing Kirby Contract.

However, the Commission agrees with the Consumer Advocate that the GHG Analysis proffered by the Companies is incomplete, and that additional discovery is warranted. 93 The Commission will revisit this issue in the proceedings leading up to its final decision and order.

3.

#### Sause Contract Approval

In sum, with respect to the Sause Contract, the Commission finds and concludes -- on an interim basis -- as follows:

The Companies have a need to transport fuel between the islands they serve, and the Sause Contract represents the most cost-effective way for the Companies to accomplish that need under the circumstances described herein.

The terms of the Sause Contract not related to pricing, costs, or charges are all as favorable or more favorable to the Companies when compared to the Kirby Contract, which will benefit the Companies' customers.

The terms of the Sause Contract related to pricing, costs, and charges represent an increase when compared with the

<sup>&</sup>lt;sup>93</sup><u>See</u> CA's SOP at 17-18.

Kirby Contract, but represent the best terms available to the Companies under the circumstances described herein.

As such, the Commission finds -- on an interim basis -- the nature of the Sause Contract is reasonable and in the public interest when considering the above-mentioned factors.

The Company's GHG analysis, described above, satisfactorily estimates the GHG emissions to be produced under the Sause Contract for purposes of interim approval.

Based on the foregoing, the Commission finds and concludes -- on an interim basis -- that the Companies have met their burden of proof in support of their request for interim approval of the Sause Contract. The Commission finds and concludes -- on an interim basis -- that the terms of the Sause Contract are prudent and in the public interest. Therefore, the Commission approves the Sause Contract on an interim basis.

D.

#### The ECRC

Given the Commission's interim approval the Sause Contract, the Commission likewise approves the Companies' request to include the costs of the Sause Contract in the Companies' respective ECRC, to the extent that such costs are not recovered the Companies' base in rates. Ιn doing, the Commission expressly states that any revenues that the Companies may generate through the shipment of third-party cargo must be used to offset the costs recovered from customers. During the remainder of this proceeding, the Commission may consider means to track and report this information. Given the findings above and the Commission's interim approval of the request to include costs in the ECRC, the Commission finds that any costs included in the ECRC pursuant to this Interim Decision and Order shall not be subject to retroactive adjustment under the final decision and order.

The Commission appreciates the Consumer Advocate's concerns regarding the nature of the ECRC in this case and will further address those concerns in the proceedings leading up to its final decision and order.

Ε.

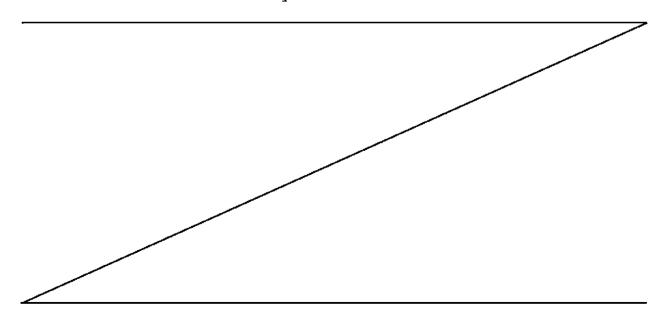
# Remainder of Proceeding

Given that this Order is issued on an interim basis, the Commission will subsequently issue a new procedural order governing the remainder of this proceeding in this docket moving forward. Such Order will address the Consumer Advocate's requests for additional discovery.

#### ORDERS

#### THE COMMISSION ORDERS:

- On an interim basis, the Commission approves the Sause Contract between the Companies and Sause.
- 2. On an interim basis, the Commission approves the Companies' request for inclusion of the costs of the marine transportation handling, other costs, and related taxes and fees in each of the relevant Company's respective ECRCs, provided that any revenues that the Companies may generate through the shipment of third-party cargo must be used to offset the costs recovered from customers.
- 3. This Interim Decision and Order is effective until the Commission issues its final decision and order in this docket, unless otherwise modified by the Commission.



4. The Commission will subsequently issue a procedural order to govern the remainder of this proceeding.

DONE at Honolulu, Hawaii \_\_\_\_\_\_DECEMBER 23, 2021

PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII

By James P. Griffin, Chair

Jennifer M. Potter, Commissioner

Leodoloff R. Asuncion, Jr., Commissioner

APPROVED AS TO FORM:

Mark Kaetsu

Commission Counsel

2021-0085.ljk

# CERTIFICATE OF SERVICE

Pursuant to Order No. 37043, the foregoing Order was served on the date it was uploaded to the Public Utilities Commission's Document Management System and served through the Document Management System's electronic Distribution List.

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